UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

JAMES T. WILSON and ELAINE WILSON,	)	**CV 493-36**
Plaintiffs,	)	
- vs -	)	
ALEXANDER'S POWER SHIPPING CO., LTD	)	
Defendant.	)	

ORDER

Before the Court is the Defendant's motion for summary judgement. For the reasons articulated below, the Court **GRANTS** the Defendant's Motion.

BACKGROUND

On April 17, 1991, the Plaintiff, an experienced stevedore superintendent, boarded the Defendant's vessel with two other stevedores to inspect the vessel prior to the commencement of loading operations. As the Plaintiff was walking along the weather deck of the vessel, he slipped and fell on a patch of oil, causing him to injure his back. The Plaintiff subsequently sued

the vessel owner, contending that the oil was transparent and partially obscured by stowed lumber and morning dew, and, thus, constituted a hidden danger and that the Defendant vessel breached its duty to warn him of such danger. The Defendant, however, maintains that the oil was clearly visible, and, moreover, regardless of its obviousness, was a hazard admittedly anticipated by the Plaintiff as an experienced stevedore, and, therefore, that the vessel had no duty to warn.

DISCUSSION

The "purpose of summary Judgment is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial.'" Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 587 (1986)(quoting Fed. R. Civ. P. 56 advisory committee's note). The Court's analysis ends "where there is no genuine issue of material fact and where the moving party is entitled to judgment as a matter of law." Great Lakes Dredge & Dock co. v. Miller, 957 F.2nd 1575, 1578 (11th Cir. 1992); Real Estate Fin. v. Resolution Trust Corp., 950 F.2d 1540, 1543 (11th Cir. 1992)(both citing Celotex corp. v. Catrett, 477 U.S. 317, 322 (1986)). In assessing whether the movant is entitled to summary judgment in its favor, the district court must review the evidence and all reasonable factual inferences arising from it in the light most favorable to the non-moving party. Welch v. Celotex Corp., 951 F.2d 1235, 1237 (11th Cir. 1992); Ryder Int's Corp. v. First Am. Nat'l Bank, 943 F.2d 1521, 1523.

The Plaintiff has brought this action pursuant to the Longshoremen's and Harbor Workers' Compensation Act ('LHWCA"), 33 U.S.C. §905(b). Under §905(b), a shipowner is liable for an injury to a covered person only where the injury is caused by a ship's negligence. Unseaworthiness, an historic ground for recovery under the Act, and a doctrine which imposed strict liability upon a shipowner for injuries to longshoremen, was abolished as a basis for shipowner liability by the 1972 Amendments to the LHWCA.

In the seminal case of Scindia Steam Navigation Co. v. De Los Santos, 451 U.S. 156 (1981), the U.S. Supreme Court set out the specific duties owed by shipowners to stevedores and longshoremen under the 1972 amendments to the LHWCA. The Supreme Court stated:

> [T]he vessel owes to the stevedore and his longshoremen employees the duty of exercising due care "under the circumstances." This duty extends at least to exercising ordinary care under the circumstances to have the ship and its equipment in such condition that an expert and experienced stevedore will be able by the exercise of reasonable care to carry on its cargo operations with reasonable safety to persons and property, and to warning the stevedore of any hazards on the ship or with respect to its equipment that are known to the vessel or should be known to it in the exercise

> of reasonable care, that would likely be encountered by the stevedore in the course of his cargo operations and that are not known by the stevedore and would not be obvious to or anticipated by him is reasonably competent in the performance of his work.

Id., 451 U.S. 166-67 (citation omitted)(emphasis added).

Thus, under Scindia, before a stevedore begins work, a shipowner must turnover the ship and its equipment in a condition that permits a stevedore to do its work with treasonable safety, and must warn the stevedore of any hidden dangers or dangers not anticipated or expected by a reasonably competent stevedore. Furthermore, once loading operations begin, the shipowner may ordinarily rely on the stevedore to perform its work with reasonable care, and there is no duty to supervise the stevedore "absent contract provision, positive law, or custom to the contrary." Roach v. M/V AQUA GRACE, 857 F.2d 1575, 1581 (11th Cir. 1988)(quoting Scindia, 451 U.S. at 172.

Under the plain language of the Supreme Court's decision in Scindia, the Defendant breached no duty to warn in this case. It is uncontested that oil and grease are commonly present on a vessel's weatherdeck, and that an experienced and expert stevedore would anticipate their presence. (Def.'s Statement of Material Facts.) Furthermore, the Plaintiff, a stevedore with more than fifteen years of experience, concedes that, as part of his duties,

he routinely checks for the presence of oil during his inspections. (Pl.'s Resp. to Def.'s Mot. for Summ. J. at 3.) Moreover, on the morning of April 17, it is undisputed that, among other tasks, the Plaintiff and his two colleagues were "looking for oil" on the ship's weather deck. (Pl.'s Resp. to Def.'s Mot. for Summ. J. at ¶2.) Given such facts, the vessel owed no duty to warn the Plaintiff of the presence of the oil, when the Plaintiff and his colleagues expected or anticipated oil on the weatherdeck and, indeed, were specifically inspecting for such oil. See, e.g., Lamartina v. Pan Ocean Shipping, 1993 AMC 77, 79 (D. Md. 1993) (shipowner had no duty to warn stevedore of presence of oil and grease when substances were anticipated by a reasonably competent stevedore in the performance of his duties); Meserole v. M/V FINA BELGIQUE, 736 F.2d 147, 150 (5th Cir. 1984) (shipowner had no duty to warn stevedore of oily residue where such residue was expected by stevedore). Additionally, while the Plaintiff contends that the oil was transparent, allegedly because it blended with the morning due, the Court finds that the mere fact that the oil amy have been transparent did not impose a duty upon the shipowner to warn of such oil, in the absence of any allegation by the Plaintiff that dew, or even clear oil, on a ship was unusual or unanticipated by him as an experienced stevedore.

Accordingly, the Court finds that the Defendant did not breach any duty to warn and hereby **GRANTS** the Defendant's Motion for Summary Judgment.

SO ORDERED this 15th day of November, 1993.

/S/

B. AVANT EDENFIELD,
CHIEF JUDGE
UNITED STATES DISTRICT
COURT, SOUTHERN DISTRICT
OF GEORGIA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

****

JAMES T. WILSON and ELAINE WILSON,	)	**CV 493-36**
Plaintiffs,	)	
- vs -	)	
ALEXANDER'S POWER SHIPPING CO., LTD	)	
Defendant.	)	

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JUDGMENT IN A CIVIL CASE

DECISION BY COURT. This action came before the Court. The issues having been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that in accordance with Court's order dated November 15, 1993, and defendants' motion for summary judgment having been granted, Judgement is hereby entered in favor or defendant Alexander's Power Shipping Company, Ltd. This case stands dismissed.

DATED November 18, 1993.

/S/
HENRY R. CRUMLEY, JR.
CLERK

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CASE NO.: 93-9405

D.C. Docket No.: CV 493-36

JAMES T. WILSON and ELAINE WILSON,

Plaintiffs/Appellants,

VS.

ALEXANDER'S POWER SHIPPING CO., LTD.,

Defendant/Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA SAVANNAH DIVISION

(SEPTEMBER 20, 1994)

Before TJOFLAT, Chief Judge, ANDERSON, Circuit Judge, and PAINE*,
Senior District Judge.

PER CURIAM:

AFFIRMED. See, 11th Cir. R. 36-1

Costs are taxed against Plaintiffs-Appellants.

*Honorable James C. Paine, Senior U.S. District Judge for the Southern District of Florida, sitting by designation.

IN THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

CASE NO.: 93-9405

D.C. Docket No.: CV 493-36

JAMES T. WILSON and ELAINE WILSON,

Plaintiffs/Appellants,

VS.

ALEXANDER'S POWER SHIPPING CO., LTD.,

Defendant/Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF GEORGIA SAVANNAH DIVISION

NOVEMBER 29, 1994

ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC

Before: TJOFLAT, Chief Judge, ANDERSON, Circuit Judge, and PAINE*, Senior District Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT

/S/
UNITED STATES CIRCUIT JUDGE

*Honorable James C. Paine, Senior U.S. District Judge for the Southern District of Florida, sitting by designation.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

****

JAMES T. WILSON and ELAINE WILSON,	)	**CV 493-36**
Plaintiffs,	)	
- vs -	)	
ALEXANDER'S POWER SHIPPING CO., LTD	)	
Defendant.	)	

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O R D E R

The Judgment of this Court in the above entitled action having been AFFIRMED

IT IS HEREBY ORDERED that the Judgment of the Eleventh Circuit, U.S. Court of Appeals, is made the judgment of this court.

This 11th day of December, 1994.

/S/
JUDGE, UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF GEORGIA

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

****

JAMES T. WILSON and ELAINE WILSON,

Plaintiffs,

- vs -

ALEXANDER'S POWER SHIPPING CO., LTD

Defendant.

****

COMPLAINT

NOW COME Plaintiffs, James T. Wilson and Elaine Wilson, in the above styled action and filing their Complaint show the Court as follows:

1. Plaintiff James T. Wilson is a resident of Richmond Hill, Georgia and at all times hereinafter mentioned was employed as a stevedore superintendent for Allsouth Stevedoring Company, Savannah, Georgia.

2. Plaintiff Elaine Wilson is a resident of Richmond Hill, Georgia and is the wife of James

T. Wilson.

3. At all times hereinafter mentioned, Defendant Alexander's Power Shipping Co., Ltd. is a legal entity organized and existing under the laws of St. Vincent and Grenadines and was managed by Alexco Shipmanagment Co., Ltd., 14 Skouzest, 18536 Piraeus, Greece and was the owner of the oceangoing vessel M/V ALEXANDER POWER.

4. Jurisdiction exists in this Court pursuant to 28 U.S.C. §1332 inasmuch as there is diversity of citizenship between the parties and the amount in controversy exceeds $50,000 exclusive of interest and cost. This case is brought pursuant to the provisions of 33 U.S.C. §905(b).

5. Venue lies within the Savannah Division of the Southern District of Georgia pursuant to 28 U.S.C. §1391.

6. On April 17, 1991, the M/V ALEXANDER'S POWER called at the port of Savannah, Georgia. Pursuant to a contract with defendant, Allsouth Stevedoring Company was to act as stevedore for the loading of cargo aboard the M/V ALEXANDER'S POWER. In preparation for working the holds of the vessel, Plaintiff, as stevedore superintendent for Allsouth Stevedoring Co. and the safety director of Allsouth Stevedoring Company boarded the vessel.

7. After boarding the vessel, Plaintiff and the safety director preceded towards the number

2 hold to check on its readiness for cargo operations. In stepping off of a pipe guard onto the weatherdeck, Plaintiff slipped on what was later determined to be oil from a ship's crane. Plaintiff fell onto his back and as a result thereof sustained a ruptured lumbar disc (L-5).

8. Subsequent investigation revealed that at the time Plaintiff boarded the vessel, there was an oil leak from a line on the vessel's crane. The clear oil had spilled out onto the weatherdeck which was also covered with dew. Neither Plaintiff nor Allsouth Stevedoring Company's safety director were able to detect the presence of the oil.

9. As a result of the injuries sustained aboard the M/V ALEXANDER'S POWER, Plaintiff was required to undergo surgery for treatment of the ruptured disc. Following surgery, Plaintiff was unable to work for a period of three months. Subsequently, Plaintiff did return to work. However, because of continuing leg and back pain, Plaintiff was not able to work in his full capacity as a stevedoring superintendent.

10. In December, 1992, because of continuing pain and disability, Plaintiff sought additional medical treatment. Subsequently, Plaintiff's orthopedic surgeon advised that Plaintiff discontinue work. Accordingly, since January 15, 1993, Plaintiff has been unable to work as a stevedoring superintendent. Plaintiff was earning approximately $40,000 per year as a stevedore. Additionally, Plaintiff has been unable to operate a

commercial cleaning business from which he had been earning approximately $2,500 a year.

11. To date, Plaintiff has incurred medical expenses of $12,625.95. Plaintiff continues to receive medical treatment. Additionally, he is sustaining a loss of income on an of $769 per week.

12. Plaintiff's injuries were caused solely and proximately by the negligence of Defendant in the following manner:

a. At the time in which Plaintiff and his co-workers boarded the M/V ALEXANDER'S POWER, oil was present on the deck of the vessel. Therefore, Defendant was negligent in failing to turnover the vessel to Plaintiff is a reasonably safe condition.

b. Defendant was negligent in failing to maintain its crane in a proper working condition and, thus, was negligent in permitting oil to leak out onto the deck.

c. Defendant was negligent In failing to warn Plaintiff of a hidden danger, i.e., existence of clear oil on the deck.

13. As a result of injuries suffered to James T. Wilson caused by Defendant's negligence, Elaine Wilson has lost her spouse's society, companionship and consortium.

WHEREFORE, Plaintiff James T. Wilson

requests trial by jury and demands judgment against Defendants in a sum to exceed $800,000 together with interest and costs of prosecuting this action. Plaintiff Elaine Wilson requests trial by jury and demands judgment against Defendants in the amount of $75,000 together with interest and costs of prosecuting this action.

DATED this 3rd day of February, 1993.

BOUHAN, WILLIAMS & LEVY

/S/

Edwin D. Robb, Jr.
Georgia Bar No.: 607900
Attorneys for Plaintiff
P.O. Box 2139
Savannah, Georgia 31498-1001
(912) 236-2491

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

JAMES T. WILSON and ELAINE WILSON,	)	CV 493-36
Plaintiffs,	)	
- vs -	)	
ALEXANDER'S POWER SHIPPING CO., LTD	)	
Defendant.	)	

MOTION FOR SUMMARY JUDGMENT SUBJECT TO DEFENDANT'S PREVIOUSLY-ASSERTED OBJECTION TO SERVICE OF PROCESS

NOW COMES, the defendant, Alexander's Power Shipping Co., Ltd. and, subject to its previously-asserted objection to service of process, moves the court for summary judgment in its favor pursuant to Rule 56 of the Federal Rules of Civil Procedure and shows there is no genuine issue as to any material fact and defendant is entitled to a judgment as a matter of law. The grounds for the

motion are as follows:

1) Plaintiff has filed suit under Section 905(b) of the Longshore and Harbor Workers' Compensation Act, 28 U.S.C. §901, et seq., for injuries he allegedly sustained when in broad daylight he slipped on an oil slick located on the weatherdeck of the Motor Vessel ALEXANDER'S POWER. He was a stevedore superintendent for Allsouth Stevedoring Company which was in charge of loading cargo on the ship.

2) The evidence before the Court in the form of an affidavit by Jon W. Latiolais, who observed the oil slick just after the alleged accident, is that the slick was out in the open on the ship's wheatherdeck in plain sight in broad daylight. It was shiny and distinct in appearance and was easily noticeable on the ship's deck. There was sufficient space on the deck around the oil so that someone walking on the deck could easily avoid stepping in it.

3) Plaintiff has the burden of proving that defendant shipowner breached its duty to warn the stevedore of any hidden defects that would be known to the shipowner in the exercise of reasonable care and to exercise reasonable care to deliver to the stevedore a safe ship with respect to gear, equipment, and workplace.

4) The shipowner's duty as stated is not breached if the condition causing the stevedore's accident was open and obvious or one that the

stevedore should have anticipated if reasonably competent in his work. Scindia Steam Navigation Co., v. De Los Santos, 451 U.S. 156, 167 (1981).

5) Additional evidence before the court in the form of affidavits from former stevedore superintendent Robert C Stone and marine surveyor Harry E. Jennings is that the presence of oil and grease on a merchant ship's weatherdeck is a common safety hazard which an experienced stevedore superintendent such as the plaintiff would anticipate, watch for, and avoid. Oil and grease on the weatherdeck is a fact of life which a reasonably competent stevedore would anticipate.

6) The material facts in the case, as set forth in the mentioned affidavits, are that the oil on the ship's deck was not hidden, was open and obvious and would have been seen or anticipated by an attentive stevedore reasonably competent in his work. Therefore defendant had no duty to warn plaintiff of the presence of the oil on the weatherdeck.

7) Based on the material facts, plaintiff cannot satisfy his burden of proving that the oil slick was hidden and would not have been seen or anticipated by a stevedore reasonably competent in his work. Since plaintiff cannot show this essential element with respect to which he bears the burden of proof, defendant is entitled to a judgment as a matter of law.

Defendant respectfully prays that summary

judgment be entered in its favor.

This 27th day of April, 1993.

CHAMLEE, DUBUS & SIPPLE

/S/

David F. Sipple
Georgia State Bar No. 649200
Attorneys for Defendant
Alexander's Power Shipping Co., Ltd.
P.O. Box 9523
Savannah, Georgia 31412
(912) 232-3311

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

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JAMES T. WILSON and ELAINE WILSON,	)	**CV 493-36**
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Defendant.	)	

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Personally appeared before me an officer authorized to administer oaths, Robert C. Stone, who first being duly sworn deposes and states:

(1) My stevedoring experience includes the following: employed by Strachan Shipping Company, a stevedoring company having its head office in Savannah, Georgia, in the stevedoring gear maintenance department from 1960 to 1964; transferred to Strachan Shipping's stevedoring department and worked as a foreman in charge of stevedoring on board ships of all types calling at

Savannah including break bulk, container, and tanker vessels from approximately 1964 to approximately 1974; continued my employment with Strachan Shipping as assistant stevedoring superintendent in charge of loading and discharging operations on ships from 1974 to approximately 1977; employed as general stevedore superintendent for Eller & Company in Savannah in charge of stevedoring vessels from approximately 1979 to 1981; and employed as general stevedore superintendent for Stevens Shipping & Terminal Company in charge of stevedoring on board vessels at Savannah, Charleston, Brunswick, and Jacksonville from 1986 to 1988.

(2) During my stevedoring experience I have spent considerable time on the weather decks and in other areas of ships of all kinds at Savannah, Charleston, Brunswick, and Jacksonville. I am familiar with the various safety hazards commonly found on merchant vessels including the presence of oil and grease on the weather decks.

(3) Based on my experience, it is the responsibility of the stevedore superintendent or foreman prior to the commencement of cargo operations on a merchant vessel to conduct a safety inspection of the ship's holds, decks, and other walking and working areas in order to make sure they are free of conditions which could present a safety hazard for the longshoremen in the performance of their work on the vessel.

(4) Oil and grease are common safety

hazards found on the weather deck of a merchant vessel. Because the presence of oil and grease on the weather deck is so commonplace, an experienced stevedore superintendent or foreman should anticipate and watch specifically for this particular hazard during his pre-cargo operation safety inspection as well as at all other times on the ship. A stevedore superintendent or foreman who is reasonably competent in the performance of his work should anticipate, watch for, and avoid oil and grease on the weather deck. Sources of oil and grease found on the deck include the ship's cranes and winches, mechanical hatch covers, cargo wires and cables, hydraulic lines, deck cargo consisting of motorized vehicles and equipment, and drum cargo.

(5) Based on my experience, I am familiar with and was responsible for complying with the Federal Safety and Health Regulations for the Longshoring Industry (29 CFR 1918). One of these regulations requires a stevedoring company to eliminate slippery conditions such as oil or grease on a ship's deck as these conditions occur. (29 C.F.R. § 1918.91 (c)). Another regulation provides that in instances where the ship's deck is wet with oil, the stevedore may not permit longshoremen to work until necessary walking and working areas have been made safe by the use of suitable non-skid materials (29 C.F.R. § 1918.38). In order to comply with these regulations, it is the responsibility of the stevedore superintendent or foreman prior to the beginning of cargo operations to inspect the weather deck and other walking and working areas of the vessel for oil and grease and

make sure that slippery conditions created by these hazards are corrected before the longshoremen start their work on the ship.

(6) In my experience, it is common that oil and grease will be found on the weather deck of a cargo ship. For this reason, an experienced stevedore reasonably competent in his work must anticipate the presence of oil and grease on a ship's deck. This hazard is a fact of life in working aboard a merchant vessel.

(7) This affidavit is based on my personal knowledge and experience and I am competent to testify to the matters stated herein. The affidavit is given for use in the captioned proceeding.

/S/
Robert C. Stone

Sworn to and subscribed before
me this 23rd day of April, 1993:

/S/
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

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JAMES T. WILSON and ELAINE WILSON,	)	CV 493-36
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- vs -	)	
ALEXANDER'S POWER SHIPPING CO., LTD	)	
Defendant.	)	

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Personally appeared before me an officer authorized to administer oaths, Harry E. Jennings, who first being duly sworn deposes and states:

(1) My seamanship and marine surveying experience includes the following: service as an apprentice seaman on merchant vessels operated by Turnbull, Scott & Co. from 1935 to 1939; service on merchant ships owned by Prince Line in world-wide operations from 1940 to 1953, working way from third officer to position of master; from 1953 to 1955 served as chief officer-staff captain on Furness Bermuda Line for Bermuda and Caribbean

Cruises; employed as assistant stevedore superintendent for Bay Ridge Operating Co. in New York, the stevedoring branch of Furness Withy & Co, from 1955 to 1956; employed as marine surveyor for T.D. Baker & Co. in New York conducting marine cargo surveys on board vessels and in other areas from 1956 to 1970; employed by Charles T. Theus & Co. in Savannah, Georgia as marine surveyor conducting marine cargo surveys and casualty investigations on ships and in other areas from 1970 to 1988; formed own company, Savannah Marine Consultants, in 1988 and am presently conducting marine cargo surveys and casualty investigations both on and off ships.

(2) Based on my experience in serving on and conducting marine surveys and casualty investigations on merchant vessels, oil and grease are two of the most common hazards found on the weather deck of a merchant ship. In my experience it is quite common that oil and grease will be found on the weather deck of a cargo ship.

(3) There are many sources of the oil and grease found on the weather deck including ship's cranes, winches, mechanical hatch covers, hydraulic lines, and cargo wires and cables.

(4) Oil and Grease on a ship's deck are hazards which an experienced stevedore who is reasonably competent in the performance of his work should anticipate, watch for, and avoid.

(5) This affidavit is based on my

personal knowledge and experience and I am competent to testify to the matters stated herein. The affidavit is given for use in the captioned proceeding.

/S/

Harry E. Jennings

Sworn to and subscribed
before me this 14th day
of April, 1993:

/S/

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

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JAMES T. WILSON and ELAINE WILSON,	)	CV 493-36
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Defendant.	)	

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Personally appeared before me an officer authorized to administer oaths, Jon W. Latiolais, who first being duly sworn deposes and states:

1) I reside at 61154 North Tranquility Drive in Lacombe, Louisiana and am employed by Gulf South Systems, Inc. located in New Orleans, Louisiana.

2) In April of 1991 I was employed by Alexco Shipmanagement (Hellas) Ltd. as a cargo superintendent. My job was to attend vessels for which Alexco acted as agent and monitor cargo

operations at the various load ports. I left my employment with Alexco in late 1991.

3) On April 17, 1991 I was attending the Motor Vessel ALEXANDER'S POWER on behalf of Alexco Shipmanagement while the vessel was loading lumber at East Coast Terminal at Savannah, Georgia. Allsouth Stevedoring Company of Savannah was in charge of the loading operation.

4) While I was on board the vessel early on the morning of April 17, one of the Allsouth stevedores reported to me that stevedore superintendent James Wilson had slipped on some oil on the weather deck of the ship. I was told the accident had just occurred.

5) I immediately accompanied the stevedore to an area on the weather deck near the forward starboard end of the number two hatch. The stevedore then showed me a slick of what appeared to be some type of oil which covered an area on the deck about two feet wide and two feet long. I did not see any oil running from the ship's crane located in the vicinity of the slick.

6) The slick of oil was shiny and was very distinct in appearance from the deck area underlying and surrounding it. The slick was out in the open and there was nothing obstructing it from view. The oil was easily noticeable on the deck and I had no difficulty seeing it. The color of the oil was reddish brown.

7) It was broad daylight at the time the accident was reported to me shortly after 7:50 a.m. on april 17, 1991.

8) There was sufficient space on deck around the slick so that someone walking the deck could easily avoid stepping in the oil.

9) The foregoing affidavit is based on my personal knowledge and experience and I am competent to testify to the matters stated herein. The affidavit is given for use in the captioned proceeding.

/S/
Jon W. Latiolais

Sworn to and subscribed before
me this 21st day of April, 1993.

/S/
Notary Public

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

JAMES T. WILSON and ELAINE WILSON,	)	CV 493-36
Plaintiffs,	)	
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ALEXANDER'S POWER SHIPPING CO., LTD	)	
Defendant.	)	

PLAINTIFFS' RESPONSE TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

NOW COME Plaintiffs, JAMES T. WILSON and ELAINE WILSON and file their response to Defendant's Motion For Summary Judgment as follows:

1.

Plaintiffs admit the allegations set forth in paragraph one to Defendant's Motion for Summary Judgment, but allege, as set forth in the Complaint, and as stated in the affidavit of Donald Klages

(Exhibit "A"), James Wilson (Exhibit "B") and Sam Hughes (Exhibit "C") the oil which originated from Defendant's crane was transparent and could not be seen on the dew covered deck. Therefore, the transparent oil constituted a hidden hazard. Moreover, because of the manner in which Defendant had stowed lumber at other previous ports, the oil was in a location that would not have been readily visible to stevedores walking from aft to forward on the starboard side, weather deck (even if it was, otherwise, detectable).

2.

Plaintiffs acknowledges that the affidavit of Jon W. Latiolais claims that he could see the oil. However, based on evidence that Plaintiff James T. Wilson has offered in this response, Affidavit of James T. Wilson (Exhibit "B") and Sam Hughes (Exhibit "C"), Plaintiffs question the accuracy of this witness, an employee of Alexco Shipmanagement (Hellas) Ltd., the manager for the M/V ALEXANDER'S POWER, a company whose sole director is Alexander Coutroumanides. Mr. Coutroumanides was the sole director of Defendant Alexander's Power Shipping Co., Ltd. Moreover, Mr. Latiolais' affidavit differs drastically from those of three Allsouth personnel whose affidavits are offered in response to Defendant's Motion for Summary Judgment. Because of the questions raised about ability to see the oil there is, at the least, a question of fact whether it constituted a hidden hazard.

3.

Plaintiffs deny that the statement contained in paragraph three is an accurate statement of the law governing a stevedore's right to recover under Section 905(b) against a shipowner. Moreover, as set forth in the Affidavit of Donald Klages (Exhibit "A"), and other affidavits, the transparent oil on a dew covered deck constituted a hidden hazard which neither he, looking specifically for oil, nor Plaintiff, nor Plaintiff's fellow stevedore, Sam Hughes, observed prior to the incident.

4.

Plaintiffs deny that this statement of law is an accurate statement of the ship owner's obligations. The allegations in paragraph four do not accurately encompass a shipowner's obligation to a stevedore. If the conditions are open and obvious, but were part of the vessel or its appurtenance a vessel owner has potential liability to a stevedore/longshoreman and, thus, is not entitled to a judgment as a matter of law.

5.

Plaintiff questions the relevance of the Affidavits taken from Robert C. Stone and Harry E. Jennings, neither of whom was present on the vessel. In contradistinction to these general affidavits, Donald Klages, Safety Director for Allsouth, stated specifically in his affidavit (Exhibit "A") that an integral part of his job as a Safety

Director on that morning was to check for the presence of oil. Covering the same route taken by Plaintiff, Mr. Klages did not notice the oil on the dew covered deck and could not detect it until after the injury - he rubbed the deck and determined that there was transparent oil on it (neither did Plaintiff's co-stevedore, Sam Hughes (Exhibit "C"). This oil originated from the ship's crane house and constituted a hidden hazard caused by the vessel and which existed on the vessel before its turn over to the stevedores.

6.

Plaintiffs deny paragraph number six of the Defendant's Motion for Summary Judgment. Because the oil constituted a hidden hazard which was created before the vessel was turned over to the stevedores, Defendant is deemed to have actual notice of it and, therefore, had an obligation to inspect and warn Plaintiff and other stevedores of its presence. Moreover, even if there is an open and obvious hazard which originates from the vessel or its appurtenances prior to turn over, the vessel owner has potential liability to a stevedore - to be determined by the trier of fact.

7.

Plaintiffs deny paragraph seven of the Defendant's Motion for Summary Judgment.

8.

In Support of its response to Defendant's Motion for Summary Judgment, Plaintiff enclosed

the affidavits of James T. Wilson (Exhibit "B"), Donald J. Klages (Exhibit "A"), and Samuel W. Hughes (Exhibit "C").

WHEREFORE, based on the foregoing Plaintiff respectfully requests that this Court deny Defendant's Motion for Summary Judgment.

This the 21st day of May, 1993.

BOUHAN, WILLIAMS & LEVY

By:_____/S/_____
Edwin D. Robb, Jr.
Georgia State Bar # 33490
Attorney for Plaintiffs
Post Office Box 2139
Savannah, GA 31498-1001
(912) 236-2491

CERTIFICATE OF SERVICE

I Edwin D. Robb Jr., do hereby certify that I have this day served the foregoing Plaintiff's Response to Defendant's Motion for Summary Judgment by placing a copy of the same in the United States mail, with proper postage affixed to assure delivery, to counsel of record as follows:

David Sipple, Esq.
Chamlee, Dubus & sipple
P.O. Box 9523
Savannah, Georgia 31412

This the 21st day of May, 1993.

BOUHAN, WILLIAMS & LEVY

By: /S/
Edwin D. Robb, Jr.
Georgia State Bar # 33490
Attorney for Plaintiffs
Post Office Box 2139
Savannah, GA 31498-1001
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

JAMES T. WILSON and ELAINE WILSON,	)	**CV 493-36**
Plaintiffs,	)	
- vs -	)	
ALEXANDER'S POWER SHIPPING CO., LTD	)	
Defendant.	)	

AFFIDAVIT

PERSONALLY APPEARED before me, the undersigned duly authorized to administer oaths, DONALD J. KLAGES, who, after being duly sworn, on oath, deposes and says:

1. Deponent lives at 21 Pheasant Run, Hilton Head Island, South Carolina 29226. Deponent is

EXHIBIT A

retired from Strachan Shipping Company, Savannah, Georgia. At time of retirement, Deponent was the safety director for Strachan Shipping Company. On April 17, 1991, Deponent was employed by Allsouth Stevedores as the Safety Director.

2. Since 1958, Deponent has either been a Safety Director or has been in the operations department of various stevedoring companies located along the East coast of the United States. Also, from 1959-1963, Deponent was a Safety Director with the U.S. Department of Labor in Baltimore, Maryland. In 1983, Deponent moved to Savannah, Georgia, where he was employed by Southeast Atlantic Cargo Operators, as the vice-president of operations. In November of 1989, Deponent became the Safety Director for Allsouth. Subsequently, Deponent joined Strachan Shipping Co. and retired from Strachan Shipping Co. on March 31, 1993.

3. One part of a Safety Director's job for a Stevedoring Company, is to check on the conditions of decks and holds prior to commencement of loading operations. Customarily, a Safety Director, will board a vessel prior to the start of loading operations and, among other things, will check for oil or debris on decks and in the cargo holds as well as other conditions that might be dangerous to stevedores and longshoremen.

4. On April 17, 1991, Allsouth was scheduled to load cargo on the M/V ALEXANDER'S

POWER which was moored at East Coast Terminals in Savannah, Georgia. Allsouth Stevedores and Longshoremen were scheduled to commence work at 0800 on that date.

5. Prior to 0800, and thus prior to arrival of any longshoreman aboard the M/V ALEXANDER'S POWER, Deponent boarded the vessel to check on conditions of the decks and in the cargo holds. Deponent started his inspection on the after starboard side of the vessel's weather deck. Deponent walked forward along the starboard side.

Several bundles of lumber had been previously stowed at another port on the weather deck between the bulwark and the hatches. Thus, Deponent was required to walk on some of the lumber as he was proceeding from aft to forward along the starboard weather deck. Covering the weather deck at that time in the morning was a layer of dew.

6. One bundle of lumber was stowed on the starboard weather deck adjacent to hold #2. Accordingly, in order to proceed forward towards the #1 hold which Allsouth was scheduled to work, Deponent walked on the lumber. There was no bundle of lumber immediately forward of the bundle stowed adjacent to hold #2. As Deponent neared the forward part of hold #2, he stepped from the bundle of lumber directly onto a metal pipe guard which was outboard of a ship's crane house. Deponent's route of travel is shown in a photograph (marked Exhibit "2" to this affidavit). The route of

travel is depicted by a dotted line. Deponent's course of travel from the pipe guard to the weather deck is depicted in Exhibit "2" to this affidavit.

After stepping onto the pipe guard, which was adjacent to a ship crane's house, Deponent then stepped onto the weather deck which was covered with dew. Deponent did not observe the presence of any oil on the deck. Deponent then continued on to hold #1 and completed his inspections. Then Deponent started to walk aft on the starboard weather deck. Mr. Wilson was walking towards Deponent.

7. Deponent saw Mr. Wilson step from the lumber onto the pipe guard and then also saw him step from the pipe guard onto the weather deck at a point several feet aft from the point which Deponent had stepped onto the weather deck. The point where Mr. Wilson stepped onto the weather deck was covered with dew. Deponent then saw Mr. Wilson slip and fall backwards. The time was approximately 0750. The point at which Mr. Wilson fell is depicted by a "0" on Exhibit "1". Deponent notes that at the time that the photograph, Exhibit "1", was taken, crew members had placed saw dust at the point where Mr. Wilson had fallen.

8. Deponent then went to the site where Mr. Wilson had fallen and rubbed his hand along the deck. At that point, for the first time, Deponent noticed that there was transparent/clear oil on the deck which also was covered with dew. When Deponent was walking along the pipe guard at hold

#2, Deponent could not determine that oil was present on the dew covered deck, because the transparent oil could not be distinguished from the dew that was on deck.

9. After Mr. Wilson fell, Deponent asked a crew member of the M/V ALEXANDER'S POWER to place sawdust on the deck where Mr. Wilson had fallen. The crew member and Deponent then tried to determine the origin of the oil. The crew member, whose name is not known to Deponent, then informed Deponent that the oil had originated from the ship crane's house which contains a series of hydraulic lines. As Deponent determined after the fall, the oil ran from the crane house under the pipe guard to the point where Mr. Wilson stepped from the pipe guard onto the weather deck.

10. At the time in which Mr. Wilson was injured, no longshoremen had worked aboard the vessel since its arrival in Savannah. Prior to the incident, Deponent saw crew members on weather deck. During that day, Deponent did not have any conversations with any representative of the vessel other than with members of the vessel's actual crew.

11. Sometime later in the morning, Deponent took the photographs of the area where Mr. Wilson fell (marked Exhibit 1 & 2). Deponent then returned to his office and drafted a written report of the incident which he gave to the chief officer of the ALEXANDER'S POWER, Jan Tokarz.

This Affidavit is given in support of the response to Defendant's Motion for Summary Judgment and is based upon the personal knowledge of Deponent.

/S/
DONALD J. KLAGES

SWORN TO AND SUBSCRIBED before me this 18th day of May, 1993.

/S/
Kelli Lynn Beacham
Notary Public
My Commission Expires: October 25, 1993

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

JAMES T. WILSON and ELAINE WILSON,	)	**CV 493-36**
Plaintiffs,	)	
- vs -	)	
ALEXANDER'S POWER SHIPPING CO., LTD	)	
Defendant.	)	

AFFIDAVIT

PERSONALLY APPEARED before me, the undersigned duly authorized to administer oaths, JAMES T. WILSON, who, after being duly sworn, on oath, deposes and says:

1. Deponent, James T. Wilson, is a resident of Richmond Hill, Bryan County, Georgia. On April

EXHIBIT B

17, 1991, Deponent was a Stevedoring Superintendent for Allsouth Stevedoring Company, Savannah, Georgia. Deponent has been a stevedore in Savannah for over 15 years. Allsouth was to load cargo aboard the M/V ALEXANDER'S POWER, moored at East Coast terminal, Savannah, Georgia.

2. The M/V ALEXANDER'S POWER docked at East Coast Terminals on April 16, 1991. Allsouth Stevedores and Longshoremen were scheduled to commence loading operations at 0800 on April 17, 1991. At approximately 0745, Deponent, in the company of Donald J. Klages, Allsouth's Safety Director, and Sam Hughes, an Allsouth Stevedore who was the other Allsouth stevedore scheduled to work the vessel, boarded the vessel. At that time, there were no longshoremen aboard the vessel and, thus, work had not yet commenced. Crew members were aboard the vessel and were on the weather deck. At the time that deponent boarded the vessel, the ship's crew had recently opened the hatches. The vessel had McGregor hatch covers which operated hydraulically.

3. Deponent's purpose in boarding the vessel before the commencement of work was to decide which gear and forklifts, if any, Allsouth would require in order to load cargo into the holds of vessel.

The M/V ALEXANDER'S POWER was moored starboard side to the pier. After Mr.

Klages, Mr. Hughes and Deponent boarded the vessel on the starboard side, Mr. Klages and Mr. Hughes preceded Deponent in walking from aft to forward on the starboard weather deck which was covered with dew. As shown in a photograph of the starboard weather deck (Exhibit #1 to this Affidavit) bundles of lumber that had been stowed at other previous ports, blocked the access on the port and starboard weather decks. Therefore, in order to proceed from aft to forward, Mr. Klages, Mr. Hughes and Deponent were required to walk on top of the bundles of lumber. The bundles of lumber were approximately 3 ft. - 4 ft. above the weather deck.

4. A bundle of lumber was immediately outboard of hold number two (2). The bundle of lumber extended to the forward part of hold number two (2). Immediately adjacent to and outboard of hold number two (2) was a pipe guard which ran along the weather deck. (approximately 12-18 ft. above the deck). The purpose of a pipe guard is to protect piping systems which run along the deck.

5. After Deponent walked to the forward end of the bundle of lumber adjacent to hold number two (2), he stooped down, put his right hand on the lumber, stepped directly from the lumber down onto the pipe guard, turned to his right and then stepped immediately onto the weather deck. (As shown in Exhibit #2). Deponent's intention was to walk to the starboard rail on the weather deck and give instructions to the ILA walking boss on the pier. Mr. Klages and Mr. Hughes headed to hold # 1.

As soon as Deponent stepped onto the deck, he slipped and fell on the deck. Although Deponent looked at the conditions of the weather deck in that area, he could not detect what was later found to be transparent oil on the dew covered deck. Deponent had previously walked on the dew covered deck without any difficulty. The place on the deck where Deponent stepped was not easily detected while stepping down from the lumber. The reason was that the lumber partially obstructed his view of the deck immediately below the lumber. (as shown on Exhibits #1 & #2 to this Affidavit). Exhibit #2 shows the route that Deponent took in stepping from the lumber to the pipe guard to the deck. The photographs, Exhibit #1 and #2, were provided to Deponent by Donald Klages. It would appear that when these photographs were taken, the dew had dissipated.

6. As Deponent slipped on the deck, his feet went out from under him and his hard hat struck the deck. Although Deponent never noticed that there was transparent oil on the dew covered deck, he can state that the spot in which he fell was slippery, unlike the dew covered deck that he had previously walked on during his route from aft to forward on the starboard weather deck. None of the ship's crew or other vessel representative had warned Plaintiff that there had been an oil leak/spill.

7. For about 20 minutes after the fall, Deponent was dazed. After he recovered from the initial shock of the fall, he started to work and was able to work that day. Later during the day,

Deponent noticed that someone had placed sawdust on the place where Deponent had fallen.

This Affidavit is given in support of Plaintiffs' Response to Defendant's Motion for Summary Judgment and is based upon the personal knowledge of Deponent.

/S/
JAMES T. WILSON

SWORN TO AND SUBSCRIBED before me this 21st day of May, 1993.

/S/
Kelli Lynn Beacham
Notary Public
My Commission Expires: 10/25/93

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

****

JAMES T. WILSON and ELAINE WILSON,	)	**CV 493-36**
Plaintiffs,	)	
- vs -	)	
ALEXANDER'S POWER SHIPPING CO., LTD	)	
Defendant.	)	

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AFFIDAVIT

PERSONALLY APPEARED before me, the undersigned duly authorized to administer oaths, SAMUEL W. HUGHES, who, after being duly sworn, on oath, deposes and says:

1. Deponent, Samuel W. Hughes, lives at 9301 Dunwoody Drive, Savannah, Georgia 31406. Deponent is employed as a stevedore foreman for Strachan Shipping Company, Savannah, Georgia. On April 17, 1991, Deponent was employed by

EXHIBIT C

Allsouth Stevedores as a stevedore foreman. On April 17, 1991, Deponent, along with James T. Wilson, was to act as stevedore foreman in connection with loading of cargo aboard the M/V ALEXANDER'S POWER, East Coast terminal, Savannah, Georgia. Mr. Wilson was to be the superintendent.

2. Work was to commence at 0800 on April 17, 1991. Shortly prior to that time, Donald J. Klages, Allsouth's safety director, Mr. Wilson and Deponent boarded the vessel by means of a gangway which was located in the after starboard side of the vessel. The vessel was moored starboard side to the pier.

3. The reason that Deponent and Mr. Wilson boarded the vessel before commencement of work was to check the condition of the holds, stowage for the holds and also to determine the type gear that Allsouth would use in loading the vessel.

4. When Deponent boarded the vessel on the after starboard weather deck, he noticed that bundles of lumber had been stowed at a previous port on both the port and starboard weather decks. Therefore, in order to check on the conditions of all of the holds, it was necessary to walk on the bundles of lumber - as Mr. Klages, Mr. Wilson and Deponent proceeded aft to forward on the starboard weather deck.

5. As they walked forward, Mr. Wilson and Deponent would step from a bundle of lumber onto

the pipe guard so that they could look into the vessel's holds. The ship's crew had recently opened the hatches. The pipe guards are located adjacent and outboard of the holds. The pipe guards extend about one foot above the weather deck.

6. At some point, Deponent proceeded ahead of Mr. Wilson as they were walking up the starboard side of the vessel. When Deponent and Mr. Wilson reached the after part of hold number 2, Deponent noticed that Mr. Wilson stopped at that point. Deponent then proceeded from the bundle of lumber at hold number 2 down onto the pipe guard and then down onto the weather deck. Deponent then proceeded up the weather deck to hold number 1. Shortly before Deponent reached hold number 1, he heard a noise, turned around and saw Mr. Wilson lying on the deck forward of the bundle of lumber at the forward part of hold number 2.

7. When Deponent had been walking in the area of hold number 2, he had not noticed any oil. After Mr. Wilson fell, Deponent came back to assist Mr. Wilson. At that time, Mr. Klages was also present.

8. Deponent recalls that there may have been two vessel cargo superintendents aboard the vessel that day. Deponent recalls the names of Jon and Jr. Deponent recalls talking to these men sometime during the loading of the ship that day. However, Deponent does not recall discussing any aspect of Mr. Wilson's fall with them. In particular,

Deponent does not recall ever pointing out the place where Mr. Wilson fell to either of the two cargo superintendents.

This Affidavit is given in support of Plaintiffs' Response to Defendant's Motion for Summary Judgment and is based upon the personal knowledge of Deponent.

/S/
SAMUEL W. HUGHES

SWORN TO AND SUBSCRIBED before me
this 17th day of May, 1993.

/S/

Kelli Lynn Beacham
Notary Public
My Commission Expires: October 25, 1993

KLAGES DEPOSITION EXCERPTS

SIPPLE-KLAGES

Q. What kind of oil was this?

A. I have no idea what kind of oil it was. It was a transparent oil. That's all I can tell you.

Q. Can you say whether it was a hydraulic oil?

A. I can't tell you whether it was hydraulic oil or not.

Q. Was it totally transparent or was there some color to it?

A. There was no color to it.

Q. Totally transparent?

A. Yes, sir.

Q. How much of the deck area did it cover?

A. Well, you can see where the sawdust is. That's approximately the area where -- I did not have a camera at the time so I couldn't take pictures of that at the time. But they had the sawdust. This is the area where the oil was.

(whereupon, photograph was marked Defendant's Deposition Exhibit Number 2 for identification.)

BY MR. SIPPLE:

Q. I'll show you a photograph that the court reporter has marked as defendant's exhibit number 2. Does that show the area where the oil was located?

A. Yes it does.

Q. And did you take that photograph?

A. Yes, I took the photograph.

Q. All right. Could you show me the area where the oil was and how much of the deck area it --

A. It was running from here down in this area here to the best of my recollection.

Q. Can I get you to use this red pen and kind of shade in the area of the deck that the oil covered?

A. (Witness complies.)

Q. Okay. So you have taken a red pen and kind of shade in the area of the deck that the oil

covered on the deck?

A. (witness complies).

Q. Okay. so you have taken a red pencil and marked on the photograph the area that the oil covered on the deck?

A. Yes.

Q. After the accident and before you reached down to Put your hand on the deck, could you see that there was a foreign substance on the deck?

A. The only substance I saw it appeared to be water.

Q. Condensation?

A. Yes.

Q. Could you -- looking at the area where you ultimately discovered the oil could you tell that there was a foreign substance there in addition to the dew or condensation?

A. No.

Q. If you say stood on the pipe guard and looked directly down onto the area where you discovered the oil, could you tell that there was something on the deck other than just dew?

A. Not really. That's why I had to put my -- I had to go down and feel it to ascertain it was oil in the first place.

. . .

Q. But there was no way to -- as a practical matter to visually detect the presence of this oil where it was?

A. That's true.

Q. Did the deck and the area where the oil was located look any difference from the surrounding deck area?

A. No, it did not.

Q. And you noticed nothing distinctive about the area of the deck where the oil was? There was nothing that distinctive or different about the area of the deck where the oil was as compared with the surrounding deck area?

A. That's correct.

Q. Was there anything at all about the appearance of the deck in the area where you discovered the oil that would suggest that there Might be a foreign substance on the deck, that is, something other than just dew?

A. Let me have the question again.

Q. In other words, was there anything about the appearance of the deck in the area where you discovered the oil that would suggest that there was a foreign substance on the deck in that area other than the dew?

A. No.

Q. So the only way as a practical matter to detect this oil on the deck was to get down and feel it with your hands?

A. That's correct sir.